

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

70TH AND GREENWOOD AVE, LLC, a  
Washington limited liability company,

Plaintiff,

v.

AGCS MARINE INSURANCE  
COMPANY, an Illinois company,

Defendant.

No. 2:23-cv-

NOTICE OF REMOVAL  
OF DEFENDANT AGCS MARINE  
INSURANCE COMPANY

**TO: CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON**

PLEASE TAKE NOTICE that Defendant AGCS Marine Insurance Company  
("AGCS" and "Defendant" interchangeably) hereby removes the above-captioned action,  
filed in the Superior Court of Washington in and for King County, to the United States  
District Court for the Western District of Washington pursuant to 28 U.S.C. §§ 1332,  
1441(a), and 1446(a). In support of this Notice of Removal, Defendant respectfully states  
as follows:

**I. INTRODUCTION**

Plaintiff 70th and Greenwood Ave, LLC ("Plaintiff") commenced this action  
against Defendant in King County Superior Court on August 10, 2023, where it was  
assigned Cause Number 23-2-14872-0 SEA (the "State Court Action"). Pursuant to 28

1 U.S.C. § 1446(a), a true and correct copy of the Complaint is attached hereto as **Exhibit**  
 2 **A.**

3 Shortly after August 10, 2023, AGCS received notice of the filing of the State  
 4 Court Action from one of its attorneys. To the best of AGCS's knowledge, it has not yet  
 5 received service of the State Court Action Summons and Complaint.

6 AGCS is filing this Notice of Removal within 30 days after the State Court Action  
 7 Complaint was filed and AGCS received notice thereof. Under 28 U.S.C. 1446(b),  
 8 AGCS's time to remove has not yet expired.

9 This case relates to a claim for insurance coverage under a builder's risk insurance  
 10 policy. Plaintiff seeks coverage for certain purported losses arising from damage to the  
 11 project due to faulty, inadequate, or defective design and construction. Plaintiff's  
 12 Complaint asserts four causes of action against Defendant: (1) breach of contract; (2)  
 13 common law bad faith; (3) Consumer Protective Action claims; and (4) negligence.  
 14 Plaintiff also reserves the right to file a fifth cause of action under the Insurance Fair  
 15 Conduct Act.

## 16 **II. GROUNDS BASIS FOR REMOVAL**

17 This case is removable pursuant to 28 U.S.C. § 1441(a), which provides that "any  
 18 civil action brought in a State court of which the district courts of the United States have  
 19 original jurisdiction, may be removed by the defendant or defendants, to the district court  
 20 of the United States for the district and division embracing the place where such action is  
 21 pending."

22 Pursuant to 28 U.S.C. § 1332, this Court "shall have original jurisdiction of all  
 23 civil actions where the matter in controversy" (1) exceeds the sum or value of \$75,000 and  
 24 (2) is between citizens of different States. As discussed further below, each of the  
 25 requirements for diversity jurisdiction are satisfied here.  
 26

### **Amount in Controversy**

When a complaint does not specify a particular amount of damages, “the removing defendant bears the burden of establishing, by a preponderance of the evidence, that the amount in controversy” exceeds the jurisdictional amount—i.e., \$75,000. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). To establish the amount in controversy, “parties may submit evidence outside the complaint, including affidavits or declarations, or other summary-judgment-type evidence relevant to the amount in controversy at the time of removal.” *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015) (internal quotation marks and citation omitted).

While AGCS denies liability for Plaintiff’s claims, Plaintiff’s Complaint seeks damages of not less than \$8,574,553, plus interest. Accordingly, based on the foregoing, AGCS has shown, by a preponderance of the evidence, that the amount in controversy requirement for diversity jurisdiction is met.

### **Diversity of Citizenship**

For purposes of determining diversity of citizenship under 28 U.S.C. § 1332(a), a corporation is a citizen of the State or foreign state where (i) it has been incorporated; and (ii) its principal place of business is located. 28 U.S.C. § 1332(c). The principal place of business for a corporation is determined by the location of its “nerve center,” which includes the location of its headquarters and the location where its “officers direct, control, and coordinate the corporation’s activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 82, 130 S. Ct. 1181 (2010).

Plaintiff is a Washington company with its principal location and place of business in Seattle, Washington. **Ex. A** ¶¶ 1, 6-7; Isacke Decl. ¶ 3. In its Complaint, Plaintiff alleges that it is the owner and developer of the project at issue in the Complaint. **Ex. A** ¶ 6.

1 Defendant is currently, and since commencement of this action has been, a  
 2 corporation duly incorporated, organized, and existing under the laws of Illinois, with its  
 3 principal place of business in Chicago, Illinois. *See id.* ¶ 2.<sup>1</sup>

4 Based on the foregoing, complete diversity of citizenship exists because Plaintiff is  
 5 a citizen of the state of Washington, while Defendant is a citizen of Illinois. Because this  
 6 action involves completely diverse parties, and the amount of controversy exceeds  
 7 \$75,000, this Court has original jurisdiction of the action pursuant to 28 U.S.C. § 1332(a).  
 8 Therefore, removal to this Court is proper.

### 9 III. VENUE AND INTRA-DISTRICT ASSIGNMENT

10 Western District of Washington, Seattle Division, is the proper venue for this  
 11 action upon removal because this district and division embrace the Superior Court of  
 12 Washington for King County, where the Complaint was filed and is currently pending.  
 13 *See* 28 U.S.C. § 1441(a).

### 14 IV. PROCEDURAL REQUIREMENTS

15 The Notice of Removal is timely filed. Plaintiff filed the Summons and Complaint  
 16 in King County Superior Court on August 10, 2023. To the best of its knowledge, AGCS  
 17 has not been served with the Summons or Complaint. However, AGCS became aware of  
 18 the Complaint shortly after its filing when the Complaint was referred to it by one of its  
 19 attorneys. Since only twenty-nine (29) days have elapsed since the original filing, AGCS  
 20 has filed and served this Notice of Removal within thirty (30) days from the date this  
 21 matter first became removable, as required by 28 U.S.C. § 1446(b)(3).

22 Pursuant to LCR 101(b), the Civil Cover Sheet, the Complaint, the Declaration of  
 23 Service, and Defendant's Demand for Jury are filed herewith. Defendant will separately  
 24 file a Verification of State Court Records in accordance with LCR 101(c) and 28 U.S.C. §  
 25 1446(a).

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26 <sup>1</sup> AGCS's Corporate Disclosure Statement has been filed contemporaneously herewith.

Defendant will promptly serve Plaintiff with this Notice of Removal, informing Plaintiff that this matter has been removed to federal court. *See* 28 U.S.C. § 1446(d). In addition, Defendant will also promptly file with the Clerk of the Superior Court of Washington for King County, and serve on Plaintiff, a Notice of Removal to Federal Court, as required by 28 U.S.C. § 1446(d).

This Notice of Removal is signed pursuant to Federal Rule of Civil Procedure 11. *See* 28 U.S.C. § 1446(a).

### **V. RESERVATION OF RIGHTS AND DEFENSES**

Defendant has appeared in the action for the purpose of removal only and for no other purpose. Defendant expressly reserves all defenses and rights, including the right to amend or supplement this Notice of Removal. None of the foregoing shall be construed as in any way conceding the truth of any of Plaintiff's allegations or waiving any of Defendant's defenses. By filing this Notice of Removal, Defendant does not waive, and it expressly reserves, all rights, defenses, or objections of any nature that it may have to Plaintiff's claims.

### **VI. CONCLUSION**

Having fulfilled the statutory requirements of removal, AGCS respectfully removes this action from the Superior Court of Washington for King County to this Court.

DATED this 8<sup>th</sup> day of September, 2023.

McNAUL EBEL NAWROT & HELGREN PLLC

By: s/Curtis C. Isacke

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Attorneys for Defendant AGCS Marine Insurance Company

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CERTIFICATE OF SERVICE OF  
NOTICE OF REMOVAL

I HEREBY CERTIFY that on September 8, 2023, I electronically filed the Notice of Removal with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure. The contact information, including email addresses, for counsel of record is as follows:

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Attorneys for Plaintiff

1 DATED this 8<sup>th</sup> day of September, 2023.

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8 Attorneys for Defendant AGCS Marine Insurance  
9 Company